



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0189; FRL-10019-83-Region 6]

Air Plan Approval; Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Withdrawal of Federal Implementation Plan Provisions for the Domtar Ashdown Mill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to withdraw the remaining portion of a Federal Implementation Plan (FIP) for Arkansas that was published in the *Federal Register* on September 27, 2016, which addressed certain regional haze obligations for the first implementation period for the Domtar Ashdown Mill. Specifically, this remaining portion of the FIP we are withdrawing contains best available retrofit technology (BART) requirements for sulfur dioxide (SO₂) and nitrogen oxide (NO_x) for Domtar Ashdown Mill Power Boiler No. 1; and SO₂, NO_x, and particulate matter (PM) BART requirements for Power Boiler No. 2. These portions of the FIP are being replaced by a revision to the Arkansas State Implementation Plan (SIP) containing SO₂, NO_x, and PM₁₀ BART alternative emission limitations that we are taking final action to approve in a separate rulemaking that is also being published in this issue of the *Federal Register*.

DATES: This final rule will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2015-0189. All documents in the docket are listed at the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102.

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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” mean “the EPA.”

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I. Background

Arkansas submitted a SIP revision on September 9, 2008, to address the requirements of the first regional haze implementation period. On August 3, 2010, Arkansas submitted a SIP revision with mostly non-substantive revisions to Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15.¹ On September 27, 2011, the State submitted supplemental information to clarify several aspects of the September 9, 2008 submittal. Hereafter we refer to these regional haze submittals collectively as the “2008 Arkansas Regional Haze SIP.” On March 12, 2012, we partially approved and partially disapproved the 2008 Arkansas Regional Haze SIP.² On September 27, 2016, in accordance with section 110(c)(1) of the CAA, we promulgated a FIP (the Arkansas Regional Haze FIP) addressing the disapproved portions of

¹ The September 9, 2008 SIP submittal included APCEC Regulation 19, Chapter 15, which is the state regulation that identified the BART-eligible and subject-to-BART sources in Arkansas and established BART emission limits for subject-to-BART sources. The August 3, 2010 SIP revision did not revise Arkansas’ list of BART-eligible and subject-to-BART sources or revise any of the BART requirements for affected sources. Instead, it included mostly non-substantive revisions to the state regulation.

² 77 FR 14604.

the 2008 Arkansas Regional Haze SIP.³ Among other things, the FIP established SO₂, nitrogen oxide (NO_x), and PM emission limits under the BART requirements for nine units at six facilities: Arkansas Electric Cooperative Corporation (AECC) Bailey Plant Unit 1; AECC McClellan Plant Unit 1; the American Electric Power/Southwestern Electric Power Company (AEP/SWEPCO) Flint Creek Plant Boiler No. 1; Entergy Arkansas, Inc. (Entergy) Lake Catherine Plant Unit 4; Entergy White Bluff Plant Units 1 and 2; Entergy White Bluff Auxiliary Boiler; and the Domtar Ashdown Mill Power Boilers No. 1 and 2. The FIP also established SO₂ and NO_x emission limits under the reasonable progress requirements for Entergy Independence Units 1 and 2.

Following the issuance of the Arkansas Regional Haze FIP, the State of Arkansas and several industry parties filed petitions for reconsideration and a motion for an administrative stay of the final rule.⁴ On April 14, 2017, we announced our decision to reconsider several elements of the FIP, as follows: appropriate compliance dates for the NO_x emission limits for Flint Creek Boiler No. 1, White Bluff Units 1 and 2, and Independence Units 1 and 2; the low-load NO_x emission limits applicable to White Bluff Units 1 and 2 and Independence Units 1 and 2 during periods of operation at less than fifty percent of the units' maximum heat input rating; the SO₂ emission limits for White Bluff Units 1 and 2; and the compliance dates for the SO₂ emission limits for Independence Units 1 and 2.⁵

EPA also published a document in the *Federal Register* on April 25, 2017, which administratively stayed the effectiveness of the NO_x compliance dates in the FIP for the Flint Creek, White Bluff, and Independence units, as well as the compliance dates for the SO₂

³ 81 FR 66332; *see also* 81 FR 68319 (October 4, 2016) (correction).

⁴ See the docket associated with this proposed rulemaking for a copy of the petitions for reconsideration and administrative stay submitted by the State of Arkansas; Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power LLC (collectively "Entergy"); AECC; and the Energy and Environmental Alliance of Arkansas (EEAA).

⁵ Letter from E. Scott Pruitt, Administrator, EPA, to Nicholas Jacob Bronni and Jamie Leigh Ewing, Arkansas Attorney General's Office (April 14, 2017). A copy of this letter is included in the docket no. EPA-R06-OAR-2015-0189-0240 at <https://www.regulations.gov>.

emission limits for the White Bluff and Independence units for a period of ninety days.⁶ On July 13, 2017, the EPA published a document proposing to extend the NO_x compliance dates for Flint Creek Boiler No. 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, by 21 months, to January 27, 2020.⁷ However, EPA did not take final action on the July 13, 2017 proposed rule because on July 12, 2017, Arkansas submitted a proposed SIP revision with a request for parallel processing (Arkansas Regional Haze NO_x SIP revision or Arkansas NO_x SIP revision). The State's proposed revision addressed the NO_x BART requirements for Bailey Unit 1, McClellan Unit 1, Flint Creek Boiler No. 1, Lake Catherine Unit 4, White Bluff Units 1 and 2, and White Bluff Auxiliary Boiler, as well as the reasonable progress requirements with respect to NO_x. We processed this proposed SIP revision in parallel with the state's SIP approval process and, in a proposed rule published in the ***Federal Register*** on September 11, 2017, we proposed approval of the Arkansas Regional Haze NO_x SIP revision and withdrawal of the corresponding parts of the Arkansas Regional Haze FIP.⁸ On October 31, 2017, we received Arkansas' final Regional Haze NO_x SIP revision addressing NO_x BART for EGUs and the reasonable progress requirements with respect to NO_x for the first implementation period. On February 12, 2018, we finalized our approval of the Arkansas Regional Haze NO_x SIP revision and our withdrawal of the corresponding parts of the FIP.⁹

On August 8, 2018, Arkansas submitted another SIP revision (Arkansas Regional Haze SO₂ and PM SIP revision or Phase II SIP revision) addressing all remaining disapproved parts of the 2008 Regional Haze SIP, with the exception of the BART and associated long-term strategy requirements for the Domtar Ashdown Mill Power Boilers No. 1 and 2. In a proposed rule published in the ***Federal Register*** on November 30, 2018, we proposed approval of a portion of the SIP revision and we also proposed to withdraw the parts of the FIP corresponding to our

⁶ 82 FR 18994.

⁷ 82 FR 32284.

⁸ 82 FR 42627.

⁹ 83 FR 5927 and 83 FR 5915 (February 12, 2018).

proposed approvals.¹⁰ The Phase II SIP revision included a discussion of Arkansas' interstate visibility transport requirements, and we stated in our proposed rule that we intended to propose action on this portion of the SIP revision in a future proposed rulemaking. On September 27, 2019, we took final action to approve a portion of the Arkansas Regional Haze SO₂ and PM SIP revision and to withdraw the corresponding parts of the FIP.¹¹

On August 13, 2019, Arkansas submitted the Arkansas Regional Haze Phase III SIP (Phase III SIP revision). This SIP revision contains a BART alternative to address BART and the associated long-term strategy requirements for two subject-to-BART sources (Power Boilers No. 1 and 2) at the Domtar Ashdown Mill located in Ashdown, Arkansas. The BART alternative addresses SO₂, PM, and NO_x BART for Power Boilers No. 1 and 2. On March 16, 2020, we proposed to approve the Phase III SIP revision.¹² Our proposed rule included proposed approval of the BART alternative for SO₂, PM, and NO_x at Power Boilers No. 1 and 2 and elements that relate to the BART requirements at this facility; proposed approval of Arkansas' request to withdraw from the approved SIP the previously approved PM₁₀ BART limit for Power Boiler No. 1; and proposed withdrawal of the remaining portion of the Arkansas FIP, which consists of provisions addressing the regional haze requirements for the Domtar Ashdown Mill. The EPA also proposed to approve the portions of the August 8, 2018 Arkansas Regional Haze Phase II SIP revision and the October 4, 2019 Arkansas 2015 Ozone (O₃) NAAQS Interstate Transport SIP revision addressing the visibility transport provisions required under CAA section 110(a)(2)(D)(i)(II) for the following NAAQS: the 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS. In a final action being published separately in this issue of the *Federal Register*, we are taking final action to approve the Arkansas Regional Phase III SIP

¹⁰ 83 FR 62204 (November 30, 2018).

¹¹ 84 FR 51033 and 84 FR 51056 (Sept. 27, 2019).

¹² 85 FR 14847 (March 16, 2020).

revision and the visibility transport portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision.

The background for this final rule and the separate final action also being published in this issue of the Federal Register that approves the Arkansas Regional Haze Phase III SIP revision and portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision is also discussed in detail in our March 16, 2020 proposed approval.¹³ The comment period was open for thirty days and closed on April 15, 2020. We received a total of two sets of public comments concerning our proposed action. The comments are included in the publicly posted docket associated with the rulemaking (EPA-R06-OAR-2015-0189), available at <https://www.regulations.gov>.

II. Final Action

We are withdrawing the remaining portion of the Arkansas Regional Haze FIP that we promulgated on September 27, 2016, found at 40 CFR 52.173(c). Specifically, we are withdrawing provisions addressing applicability and definitions of the FIP; SO₂ and NO_x emission limits for Power Boiler No. 1; SO₂, NO_x, and PM emission limits for Power Boiler No. 2; BART compliance dates; compliance determination requirements and reporting and recordkeeping requirements associated with the BART emission limits; and provisions addressing equipment operations and enforcement. We are removing these SO₂, NO_x, and PM emission limitations and associated requirements for Power Boilers No. 1 and 2 found at 40 CFR 52.173(c), and as of the effective date of this final rule these requirements will no longer apply to these units. Since we are withdrawing the text from paragraph (c) under 40 CFR 52.173, we are also reserving paragraph (c) so as to not disturb the numbering of existing paragraphs (d) through (g) under 40 CFR 52.173.

¹³ 85 FR 14847.

As explained in our March 16, 2020 proposal,¹⁴ this action is based on our separate action being published in this issue of the *Federal Register* approving the Arkansas Regional Haze Phase III SIP revision submitted to us on August 13, 2019. In that separate action, EPA is making the determination that the Arkansas Regional Haze Phase III SIP revision is approvable because the plan's provisions meet the applicable requirements of the CAA and EPA implementing regulations. EPA is finalizing this action under section 110 and part C of the Act.

III. Response to Comments

We received two comment letters concerning our proposed action, which included our proposed approval of the Phase III SIP revision, proposed approval of the visibility transport portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision, and proposed withdrawal of the remaining FIP provisions. EPA did not receive any comments specifically addressing our proposed withdrawal of the remaining FIP provisions; rather, the comments addressed EPA's proposed approval of the SIP provisions that would replace the FIP. Therefore, we have responded to all relevant comments in response to our proposed action in the separate, final notice being published in this issue of the *Federal Register* that approves the Arkansas Regional Haze Phase III SIP revision.¹⁵

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/lawsregulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action is exempt from review by the Office of Management and Budget (OMB) because it will withdraw a FIP containing source-specific SO₂, NO_x, and PM emission limits for

¹⁴ 85 FR 14847.

¹⁵ Please see Docket No. EPA-R06-OAR-2015-0189 at <https://www.regulations.gov>.

two individually identified units at one facility in Arkansas and is therefore not a rule of general applicability and not a significant regulatory action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the PRA. Burden is defined at 5 CFR 1320.3(b). This final rule withdraws a FIP containing source-specific SO₂, NO_x, and PM emission limits for two individually identified units at one facility in Arkansas.

C. Regulatory Flexibility Act

I certify that this final action will not have a significant economic impact on a substantial number of small entities under the RFA. This final action will not impose any requirements on small entities. This final action withdraws a FIP containing source-specific SO₂, NO_x, and PM emission limits that apply to two individually identified units at one facility in Arkansas.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the FIP we are withdrawing does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and

will not impose substantial direct costs on tribal governments or preempt tribal law. This final action withdraws a FIP that applies to two individually identified units at one facility in Arkansas. There are no Indian reservation lands in Arkansas. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks¹⁶ applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the EO has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

¹⁶ 62 FR 19885 (Apr. 23, 1997).

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does **not** have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability that only affects one individually identified facility in Arkansas.

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Regional haze, Reporting and recordkeeping requirements, Sulfur Dioxide, Visibility.

Jane Nishida,
Acting Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

§ 52.173 [Amended]

2. In § 52.173, remove and reserve paragraph (c).

[FR Doc. 2021-05361 Filed: 3/19/2021 8:45 am; Publication Date: 3/22/2021]